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National Marine Fisheries Service
Office of Protected Resources
Permits Division (F/PR1)
1315 East-West Highway Rm. 13705
Silver Spring, MD 20910

NOV 14 2001

Sent via U.S. Mail and Facsimile (301) 713-0376 faxed 10/24/01

RE: Proposed amendment to regulations for permits to capture or import marine mammals for purposes of public display under the Marine Mammal Protection Act of 1972 (MMPA).

To Whom It May Concern:

On behalf of the Animal Protection Institute (API) and our 85,000 national members, we offer these comments on the proposed amendments to the permit regulations for the capture and import of marine mammals for purpose of public display under the Marine Mammal Protection Act of **1972** (MMPA) as noticed in the *Federal Register* on July 3, 2001 (Volume 66, Number 128).

Before proceeding with these comments, we would like to commend the NMFS for recognizing the controversial nature of marine mammal capture for public display purposes and that current regulations are not effective in protecting marine **mammals** or ensuring the integrity of the Marine Mammal Protection Act. The current regulations fall short in several key **areas**. Our chief concerns **are** the following: 1) General Public Display Requirements 2) Permits to Capture or Import 3) Re-export of Marine Mammals 4) Export of Captive Marine Mammals.

1) General Public Display Requirements:

We question the scientific educational or societal value of captured marine mammals. We feel that **an** applicant should at least be required to demonstrate the effectiveness of their display and education program, the *importance* of the captured animals to scientific study, or their value to a captive breeding program sanctioned under a Species Survival Plan (SSP) prior to receiving a permit.

The Value of Captive Marine Mammals to Conservation Education:

The Issuance Criteria under the MMPA outlined under Sec. 216.43(b)(3), allows the take or import of marine mammals for public display if the applicant, "offers a program for education of conservation **that** is based on professionally recognized **standards** of the public display **community**." However **as** noted by the **NMFS**, "there are no uniform professionally recognized **standards** established by the entire public display **community** for education or conservation programs." In lieu of such "standards" the NMFS **asked** the industry to submit its **own** standards and published them **as** examples of standards on which **education/conservation** programs should be based. However, to our knowledge the effectiveness of these "standards" **has** not been measured - there exists no behavioral research demonstrating an association between viewing animals in a captive setting and either knowledge about the animal or intention to take action to conserve the animal in the wild. A 1987 national survey of marine mammal conservation education **and**

research programs revealed that few institutions engage in systematic evaluation of the informal learning opportunities they provide to the public. Respondents had most difficulty in addressing the question of which programs were most effective¹.

The educational value of animal displays has been seriously questioned in recent years. In *The Modern Ark* (1997), Vicki Croke notes that zoo goers spend on average three minutes or less viewing each exhibit and typically do not read informational signs. There is no indication that individuals visiting zoos and animal theme parks are particularly interested in the population status of an animal or what steps are being taken to ensure its survival in the wild. Additionally, the “educational” material provided at captive marine mammal facilities is often largely superficial. As Communications Professor, Susan Davis, described in her book, “Spectacular Nature: Corporate Culture and The Sea World Experience,” most of the information communicated at Sea World is, “vaguely taxonomic information preset and prerecorded and built around the entertainment structures of the park².”

In fact, patrons visiting zoos and **aquariums** may actually witness and learn about abnormal animal behavior because **all aspects** of the captive animals’ lives are manipulated to present entertaining animal experiences. Animals are rarely seen mating, fighting, foraging, migrating or interacting with other species. Habitats are artificial, lacking in the size, complexity and ecosystem dynamics to be found in the animals’ native environments. Moreover, many **animals**, such **as** blue and humpback whales, enjoy a high level of public sympathy and concern despite the fact that they have never been held in captivity. **NMFS** should consider improving the conservation education requirement standards for wild capture permit applications by requiring **that** institutions demonstrate the effectiveness of their programs prior to removing animals from the wild. Allowing the industry to set its own **standards** without public review is not acceptable.

The Value of Captive Marine Mammals to Science:

While it is often claimed **that** information gained from captives is useful in saving their wild counterparts, the flow of information between captive studies and wild studies is generally unidirectional with captive whales and dolphins benefiting more from wild studies than vice versa. A review of the current research conducted and rated based on the legitimate general application to marine mammal biology demonstrates this. The review revealed that only **4** percent of the research effort presented utilized animals held in zoos, marine parks and aquariums and only **6** percent used animals held at research facilities or rehabilitation centers³.

Marine biologist Sue Mayer Ph.D. asserts **that** captives make poor models for free ranging populations for several reasons. First, captivity leads to changes in basic hematology and blood biochemistry **making** blood data collected in captivity of little **use** to wild animals. Secondly, captives are routinely treated with anthelmintics so **they** do

¹ B. Birney. “The status of AAZPA’s marine mammal conservation education and research programs.” Unpublished 1990 report. in Elin Kelsey. “Conceptual change and killer whales: constructing ecological values for animals at the Vancouver Aquarium.” *Int. J. Sci. Educ.*, Vol. 13(1991), No 5: 551-559

² Susan G. Davis. *Spectacular Nature: Corporate Culture and the Sea World Experience*. Berkeley: University of California Press, 1997.

³ Naomi A Rose, Ph.D. “The Well-being of Captive Marine Mammals: Concerns and Conflicts.” in Gordon M. Burghardt, Ph.D., *et al.*, editors. *The Well-being of Animals in Zoo and Aquarium Sponsored Research*. Greenbelt, MD: Scientists Center for Animal Welfare, 1996.

not carry the same parasite burden **as** wild animals. Thirdly, experiments on cognition are impossible to extrapolate for conservation issues, such **as** entanglement in nets, because captives are limited to a barren acoustical and visual environment. Lastly, behavioral **data** collected in captivity is unreliable for wild animals because captive animals do not interact with a natural environment or live in normal social groups and many captives exhibit abnormal behavior not known in the wild⁴. Aquariums seeking to capture wild marine mammals should be required to demonstrate how the captured animals will contribute to the conservation of wild species.

Societal Values:

A recent national public opinion **survey** commissioned by the Humane Society of the United States suggests that a majority of Americans would support strong restrictions for marine mammal capture. Sixty percent of the sample objected to capturing wild whales and dolphins for display in zoos and aquariums, and four-fifths believed zoos and **aquariums** should not be permitted to display animals unless major educational and/or scientific benefits resulted. Like **all** wildlife marine mammals are considered by law to be a “public resource” **and, as** such, the sentiments of the public should be **taken** in to consideration when deciding how our wildlife will be managed. To do otherwise would be **an** affront to the American public and our democratic process.

2) Permits to Capture or Import

According to the NMFS applicants who wish to import marine mammals must, “demonstrate that the proposed capture or importation is from a **source** that will have the least possible effect on wild populations.” The **NMFS** **also** requires **that**, “the capture of marine mammals to be imported must also be consistent with requirements for capturing animals in waters under U.S. jurisdiction.” However, it can be difficult if not impossible to determine with **certainty** how wild marine mammals will be collected in foreign countries. Marine mammal protection laws in many countries are poorly enforced or non-existent. Without an impartial third party involved in observing the capture and import of marine mammals from foreign countries it is **all** too easy for the benefiting parties, i.e. the buyers and sellers, to **agree** on a capture technique **that** may or may not be consistent with U.S. standards.

Steps **must** be taken to discourage applicants **from** becoming involved in “marine mammal laundering”- obtaining marine mammals from foreign dealers caught outside of U.S. waters. Or capturing the whales themselves (or supplying the funds) and **storing** the **animals** in foreign facilities and importing them later. The capture techniques employed in foreign countries are **often brutal** and conducted **with** out regard for the effects on wild populations. An example is the Japanese “drive fishery” in which whales or dolphins are rounded up at sea and “driven” into a small cove where some are slaughtered and others are sold to aquariums. In 1993 Marine World Africa USA attempted to import false killer whales obtained from Japanese drive fisheries. While the permit was eventually denied the potential for U.S. facilities to support such capture techniques should be addressed and explicitly prohibited.

To avoid unscrupulous international trading in marine mammals, applicants seeking to import marine **mammals** from foreign countries should identify why the desired animals are being sought in foreign waters rather than **within** U.S. waters. While it is possible

⁴ Sue Mayer, B.Sc., B.V.Sc., Ph.D., MRCVS. “A Review of the Scientific Justifications for Maintaining Cetaceans in Captivity.” Bath: The Whale **and** Dolphin Conservation Society, 1998.

that some desired animals may not exist in U.S. waters the **animals** most commonly used for public display are. We suspect that the primary reason that U.S. facilities seek marine mammals from foreign suppliers is to avoid strict U.S. regulations and potentially messy public relations. Importers should **first** demonstrate that the **species** of animal requested is not available in U.S. waters, is not in sufficient numbers in U.S. waters, or other reason not related solely to the ease of acquisition. In addition, the capture of the animals to be imported should be observed by a third party to ensure that the process is accurately recorded and U.S. standards are followed.

3) Re-export of Marine Mammals

The proposed rule states that “holders of marine mammals imported into the United States under the authority of a public display permit may re-export these marine mammals without the foreign certifications ...provided the marine mammal is returning to the **original** foreign holder and foreign facility.” We recommend that this provision be amended to require the holder of the marine mammal to provide written documentation to NMFS that the foreign holder and foreign facility meet care standards comparable to the public display requirements of the MMPA and provide a copy of the comparable care standards.

4) Export of Captive Marine Mammals

We are particularly concerned about the quality of care that exported marine mammals will receive once they leave U.S. borders. Many countries ~~that~~ wish to import marine mammals do not have effective animal protection laws to protect them or their future offspring from negligence or abuse. **As** such we support NMFS policy prior to the 1994 MMPA **amendments** that made the issuance of permits to export marine mammals for public display contingent on 1) certification of the **accuracy** of information from foreign permit applications by the government with jurisdiction over the applicants’ facilities; and 2) certification by that government that it would afford **comity** to any decision by NMFS to amend, modify, suspend or revoke **a** permit.

In addition, we are concerned with proposed regulation Sec. 216.43 (**f**). Particularly, the requirement that the “receiver complies with the public display requirements of Sec. 216.43 (b)(3)(i) through (iii).” However, a receiver *cannot* meet the requirements of Sec. 216.43(ii) for it requires that the receiver be “registered or hold **an** exhibitor’s license issued under the Animal Welfare Act (AWA)...” How *can* a receiver, which is located outside the United states, receive a license under the AWA? We applaud this provision if this statement **was** intentional and, **as** such, does not allow for marine mammals to be exported to foreign facilities, outside the jurisdiction of the United States. However, we are not naïve to ~~think that~~ this was NMFS’ intention, therefore, please clarify **this** provision.

Also, we are skeptical whether or not Sec. 216.43 (f)(4) provides enough protection for the marine mammals leaving the United States. **All** that is required is a statement certifying that “the information submitted by the foreign **receiver/facility** is accurate; (ii) ~~the~~ laws and regulations of the foreign government involved permit that the government to **enforce** requirements equivalent to the requirements of the U.S. Marine Mammal Protection Act and **U.S.** Animal Welfare Act. The foreign government **will** enforce such requirements and take protective measures where necessary for marine mammals exported from the United States.” **First**, there is no guarantee that the foreign equivalent law will be enforced by the foreign government. Second, there is no requirement that copies of the foreign law be provided to the United States. Lastly, the United States **has**

no power of enforcement to ensure that the foreign receiver/facility will comply with their **country's** laws relating to animal welfare. We encourage that the above concerns be addressed in amendments to the proposed regulation.

Also there is reference to a Sec. 216.43(f)(4)(iii) (see Sec. 216.43(f)(5)), which does not appear in the Federal Register **Notice**. We recommend the **NMFS** look into **this** missing section.

Conclusion:

Again, we **thank** you for this opportunity to comment, and we respectfully request that you consider the above recommendations when you finalize the proposed regulations governing the taking **and** impairing of marine mammals. If you have **any** questions or comments please don't hesitate to contact us at (916)447-3085.

sincerely,

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